

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THOMAS J. CAPANO, :
Petitioner, :
v. : Civil Action No. 06-58 ***
: :
THOMAS CARROLL, Warden, *et al.*, :
Respondent. :
:

MOTION TO ASSIGN A JUDGE TO THE CASE

In accordance with Local Rule 40.1, the Petitioner moves the Court to assign the above captioned matter to a Judge of this Court. In support of this Motion, it is further represented as follows:

1. The Petitioner, Thomas J. Capano (“Capano”), has petitioned for Habeas Corpus relief under 28 U.S.C. §2254, challenging his 1999 conviction for first degree murder in the Delaware Superior Court. The Petition was filed on January 30, 2006. (D.I. 1)
2. The case was originally assigned to the Honorable Kent A. Jordan. (D.I. 2).
3. The Petitioner’s Opening Brief in support of the Petition for Habeas Corpus relief was filed on February 20, 2007. (D.I. 26). The Respondents’ Answering Brief is due on June 8, 2007, but Respondents have filed a Motion to extend the time for filing the Answering Brief to June 22, 2007. That Motion is not opposed by Petitioner. (D.I. 31).
4. On December 15, 2006, the case was designated to be assigned to the judge who fills the vacancy left by the elevation of Judge Kent A. Jordan to the Third Circuit Court of Appeals. (D.I. 21).
5. Based on the current Scheduling Order, as amended, briefing in the case will be completed by the end of July 2007 and the matter will be ripe for decision.
6. It appears, however, that a decision in the case will be delayed for an unknown and indefinite period of time because a replacement to fill the existing vacancy resulting from the elevation of Judge Jordan to the Third Circuit Court of Appeals has not been named, let alone confirmed by the United States Senate.

7. Petitioner avers that he has a right to have his Petition considered on the merits without undue or prejudicial delay. See, e.g., *Hassine v. Zimmerman*, 160 F.3d 941, 953-955 (3d Cir. 1998).

Local Rule 7.1.1 Certification

The undersigned hereby certifies that he has contacted Elizabeth R. McFarlan, Esquire, counsel for the respondents, who does not object to the Motion.

/s/ Joseph M. Bernstein
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Dated: June 7, 2007

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2007, I electronically filed the foregoing Motion to Assign a Judge to the Case with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Loren C. Meyers, Esquire
Elizabeth R. Mcfarlan, Esquire
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/s/ Joseph M. Bernstein
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